

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2013] NZIACDT 44

Reference No: IACDT 001/12

IN THE MATTER

of a referral under s 48 of the Immigration
Advisers Licensing Act 2007

BY

Immigration Advisers Authority

Authority

BETWEEN

NO and NTO

Complainants

AND

Hakaoro Hakaoro

Adviser

THE COMPLAINANTS' NAMES ARE NOT TO BE PUBLISHED

Hearing: 19 April 2013, 24 & 25 June 2013

DECISION

REPRESENTATION:

Authority: Ms T Thompson, Ministry of Business, Innovation and Employment, Auckland.

Complainants: Mr N T Tupou, Barrister, Auckland.

Adviser: Mr J Sutton, Barrister, Auckland.

Date Issued: 1 August 2013

DECISION

Introduction

- [1] Mr Hakaoro is an immigration consultant; the complainants say they engaged him.
- [2] The complainants say they consulted Mr Hakaoro regarding immigration matters, paid him \$2,000, and that he did nothing for them. He later handed over their passports to Immigration New Zealand and invited the immigration officer to deport them while retaining their money. Further, he behaved inappropriately by using bad language and making inappropriate comments.
- [3] In support of this complaint, they produced a letter written to them by Mr Hakaoro which is consistent with him agreeing to provide immigration services.
- [4] Mr Hakaoro in contrast says he was not engaged to provide immigration services, but rather his wife was paid the \$2,000 to seek a job offer. Accordingly, he did not comply with the Code of Conduct that applies to him as a licensed immigration adviser as he had no duties to them in that capacity. He denies various aspects of the conduct attributed to him.
- [5] Mr Hakaoro produced documents written by him and his wife, which he says support his account of the true nature of the duties he undertook; he accepts none of the material was provided to the complainants at the time. The complainants say this material has been manufactured as a response to the complaint.
- [6] The Tribunal has had to determine what the true events were and what professional obligations applied to Mr Hakaoro.
- [7] After conducting an oral hearing to give Mr Hakaoro the opportunity of answering the allegations against him and examining the evidence, the Tribunal has found the complaint to be justified and accurate. Further, the Tribunal found that Mr Hakaoro was acting as a licensed immigration adviser and was consequently responsible for his conduct in that capacity.

The complaint

- [8] The complainants lodged their complaint on the following basis.
- [9] The complainants are a married couple, with five children. Three of the children were born in New Zealand and are New Zealand citizens; the other two children were born in the complainants' country of origin.
- [10] The complainants are nationals of their country of origin, and do not have the right to live in New Zealand permanently. In March or April 2011 they were in New Zealand unlawfully, having held visas which had expired.
- [11] The complainants had taken advice from a lawyer who is experienced in immigration matters. That lawyer did not take the matter further, and the complainants took the materials relating to their immigration status back from the lawyer in August or September 2011.

First visit to Mr Hakaoro

- [12] Mr Hakaoro is a licensed immigration adviser, and he advertised his services on the radio. The complainants heard the advertisement and consulted Mr Hakaoro on 22 September 2011.
- [13] When the complainants arrived they were told that Mr Hakaoro would only speak with them after they paid \$50. The complainants first language was not English, so a woman known as Manua assisted in communication by translating. She is Mr Hakaoro's wife.
- [14] Mr Hakaoro's advice was that:

[14.1] The complainants should consult with someone less expensive.

[14.2] However, if they paid him \$3,000 he would clear their names from remaining in New Zealand unlawfully after their visas expired.

[15] The complainants then questioned Mr Hakaoro as to whether he could in fact recover their lawful status and gain them residence visas. He assured them that if they paid the money he would be able to gain a residence visa for them. Mr Hakaoro asked for a deposit, and later that day they paid \$1,000 and the following day a further \$1,000 after borrowing the money from a family member.

Letter regarding fees and nature of services to be provided

[16] Mr Hakaoro wrote to the complainants in a letter dated 23 September 2011. In this letter he identified himself as an immigration adviser, with his licence number.

[17] The letter said that his fee was \$3,000, and it was for “the preparation and submission of your application under the relevant section of the Immigration Act 2009”.

[18] There was no written agreement, only two receipts issued in respect of the payments of \$1,000. Contrary to the terms of the letter, and the discussion with Mr Hakaoro, the receipt said the payments were for a job offer.

[19] The complainants did not pay any money for job offers, and there was no communication regarding job offers at any time.

Impugned letter regarding employment

[20] Since the complaint was lodged Mr Hakaoro has produced a letter dated 23 September 2011 addressed to his wife. The letter relates to the provision of a job offer for the complainants and is written in a style appropriate for communicating with a person who had no knowledge of the matter.

[21] Mr Hakaoro’s wife was in fact a participant in the interview regarding the complainants’ affairs, and the complainants know of no reason why such a letter would be generated. Not only does it make no sense in relation to their discussions and Mr Hakaoro’s letter, but also because an employment offer was not relevant. They engaged Mr Hakaoro to deal with humanitarian issues relating to immigration.

[22] A letter, purportedly from Forbury Construction Ltd, dated 27 September 2011 was also produced after the complaint. This letter was not ever seen by the complainants until after the complaint, and they had no contact with the purported employer.

[23] The complainants accordingly suspect that the two letters have been created to respond to the complaint.

Second visit to Mr Hakaoro

[24] When the complainants visited Mr Hakaoro with the second payment, he suggested that they might get more clients for him, and he would take that into account in relation to fees.

[25] Mr Hakaoro said the complainants should get a job offer to assist with their application. If they were apprehended by Immigration New Zealand, the letter he had written would secure their right to be in New Zealand while he prepared the applications for visas to be issued.

[26] Mr Hakaoro said the basis for getting visas would be:

[26.1] the health difficulties of their child; and

[26.2] a job offer.

[27] Mr Hakaoro and his wife indicated to the complainants that they were influential with Immigration New Zealand as they were good friends with the manager, and had him and other high ranking Immigration New Zealand officials as guests at their home.

[28] Mr Hakaoro said that he would have lunch with officials, whereby the officials would disclose lists of persons unlawfully in New Zealand and Mr Hakaoro would instruct them to delete particular names.

Third visit to Mr Hakaoro

[29] On 27 September 2011, the complainants were requested to return to Mr Hakaoro's office. They did so, and were told:

[29.1] To produce birth certificates for their two children born outside New Zealand.

[29.2] That Mr Hakaoro would get funds from the New Zealand government to help those children, and also money would be available from the New Zealand Inland Revenue Department. Mr Hakaoro assured the complainants this was lawful.

[29.3] They should tell other persons of the same nationality, who were in New Zealand unlawfully, to consult Mr Hakaoro, as after the Rugby World Cup that nationality was to be targeted by the government for deportation.

Fourth visit to Mr Hakaoro

[30] On 1 October 2011, the complainants returned to see Mr Hakaoro as the partner of a family member had been detained, and was about to be deported.

[31] Mr Hakaoro spoke with the family member and he was told that they had \$1,000 available to pay to him.

[32] Mr Hakaoro's reaction was to use foul language, to express the view that they should stop trifling with him. The complainants and the family member were deeply shocked.

Fifth visit to Mr Hakaoro

[33] The following day, Mr Hakaoro's wife asked that the person whose partner faced deportation should come to their home. She suggested that she should attend alone; however the complainants had to assist with transport, so they attended with this family member.

[34] The complainants went outside and were asked to return about 45 minutes later.

[35] At this point Mr Hakaoro said the family member whose partner was to be deported should abandon her relationship with her partner, and he would arrange for his nephew to take up a relationship with her.

[36] At that point Mr Hakaoro embarked on a discussion of sexual matters that have no place in a professional consultation, including discussing his own libido.

[37] Mr Hakaoro's wife joined in the discussion regarding sexual matters.

Sixth visit to Mr Hakaoro

[38] On 3 October 2011, the complainants returned to Mr Hakaoro's home, as they wished to get the original of a letter from a doctor regarding their son who had some health or disability issues.

Seventh visit to Mr Hakaoro

- [39] On about 5 or 6 October 2011, the complainants again returned to Mr Hakaoro's home, as Mr Hakaoro's wife had contacted them.
- [40] They were asked for a birth certificate for one of the children; however it had not been delivered to the complainants from their country of origin.
- [41] Mr Hakaoro then began discussing the relative's partner who was facing deportation. The complainants said that the family member was very disappointed. Mr Hakaoro then had an angry outburst and used foul language. He discussed sexual matters, including his sexual exploits with clients, and that he would arrange for clients to be deported if they were not compliant.

Eighth visit to Mr Hakaoro

- [42] On 27 October 2011, the complainants returned to Mr Hakaoro's home and told him they were seeking the refund of the \$2,000 they had paid, and their personal documents.
- [43] Mr Hakaoro said he would not refund any money and told them to leave.

Actions following termination of instructions

- [44] The complainants were upset and concerned about Mr Hakaoro and his wife's conduct. They found him to be unprofessional; he smoked during consultations, talked about irrelevant sexual matters, swore a lot and had inappropriate mannerisms.
- [45] The family needed the \$2,000 and Mr Hakaoro had not assisted them.
- [46] Mr Hakaoro did not return personal documents including passports. Instead, he sent them to Immigration New Zealand. He also failed to provide documents he held to the immigration advisers the complainants subsequently engaged. Mr Hakaoro had no authority to deliver the passports to Immigration New Zealand. He did so improperly.
- [47] The complainants allege Mr Hakaoro took the step of giving Immigration New Zealand the passports as he wished to have them deported from New Zealand. They refer to an email from Immigration New Zealand in which the relevant immigration compliance officer noted:

"I was at Mr Hakaoro's home for the reason of deporting [an unrelated person]. [Mr Hakaoro] mentioned that he has passports of the [complainants' family] and he wants me to deport them as they are liars and doing a disservice to the community. At this point, I had no idea who they were and did not state that I would deport them but would look into this and I gave him a receipt for the passports. At no stage did I request them as I did not know about them."

- [48] Mr Tupou's letter of 8 December 2011 quotes from the compliance officer's email of 30 November 2011. Mr Ka who was Mr Hakaoro's agent was the primary recipient of the email.

Mr Hakaoro's response

- [49] Mr Hakaoro entered into correspondence with the Authority on this matter. However, Mr Hakaoro's final position on the papers lodged with the Authority appeared to be identified in a memorandum and three affidavits filed with the Tribunal under cover of a letter dated 10 January 2012.
- [50] The three affidavits are from:
 - [50.1] Mr Hakaoro's wife,

[50.2] Pastor Teinapi Tauri, and

[50.3] Mr Hakaoro.

The memorandum

- [51] The memorandum said there was no complaint in law before the Tribunal. However, the reasons for that were not comprehensible, as there was a complaint of serious misconduct supported by an affidavit and written material that confirms the grounds.
- [52] Mr Hakaoro made a claim of a lack of “natural justice”. Again, the reasons for that were not comprehensible, as there was a complaint of serious misconduct which was routinely processed and lodged with the Tribunal in the correct procedural manner.
- [53] The memorandum also claimed that the affidavits demonstrate the complaint should be dismissed on its merits.
- [54] This memorandum was followed by another memorandum dated 16 February 2012. This later memorandum alleged that the complaint was fraudulent and the complaints before the Tribunal did not amount to a complaint in law. It is difficult to relate the allegations to the material before the Tribunal.

Mr Hakaoro's wife's affidavit

- [55] Mr Hakaoro's wife confirmed she had participated in the consultations as the complainants described.
- [56] The material elements in her affidavit were as follows.

Initial consultation

- [56.1] The initial consultation was routine.
- [56.2] It was practice at Mr Hakaoro's immigration consultancy “to have me present at all times during the consultation [when a woman was present] as a protection measure on my husband's part to protect him from any risk of being sheeted with a complaint or complaints of a sexual nature.”
- [56.3] The advice Mr Hakaoro provided to the complainants was:
 - [56.3.1] The complainants should leave New Zealand immediately.
 - [56.3.2] If they did not, Mr Hakaoro could apply under section 61 of the Immigration Act. The fees were \$3,000 per person, but Mr Hakaoro would do the work for a fee of \$3,000 for the complainants and their two children.
 - [56.3.3] “If we are successful with a ‘Section 61 Application we will then apply for either Work or Visitor Visas. Job offers are then needed...”
 - [56.3.4] The outcome of a section 61 application was uncertain.
 - [56.3.5] The fee of \$3,000 was not to “buy” a visa, but for the written submission.
 - [56.3.6] Immigration compliance was important.
 - [56.3.7] The job offer fee was \$3,000 per person. “After a ‘Section 61 Application’ is prepared the job offer is then put through together with the ‘Section 61 Application’ or alternatively the job offer can be put through after the approval of a ‘Section 61 Application’”.

[56.3.8] Mr Hakaoro's wife produced notes that she claimed were contemporaneous notes of the consultation.

[56.4] After the consultation Mr Hakaoro and his wife had a discussion, and he expressed concerns regarding the complainants' honesty. Mr Hakaoro's wife said he should expect them to be dishonest, as lies were a habit with people of their nationality.

Payment of \$1,000 for job offer

[56.5] On 22 September 2011, the complainants paid \$1,000 for the purpose of a job offer.

[56.6] However, the affidavit does not explain how that is to be reconciled with the preceding claim in the affidavit that the order was first a section 61 application, then a "job offer" (see [56.3.3]).

Second payment of \$1,000

[56.7] The complainants paid a further \$1,000 for a job offer, and were insistent that Mr Hakaoro take the money.

Mr Hakaoro writes to his wife and a job offer results

[56.8] On 23 September 2011, Mr Hakaoro wrote to his wife regarding seeking an offer of employment for the complainants. A copy of the letter was produced to the Tribunal.

[56.9] In a letter dated 27 September 2011, an offer of employment for one of the complainants was produced by Forbury Construction Ltd.

Inquiries into issues relating to the Complainants' son

[56.10] On 25 September 2011, Mr Hakaoro made inquiries regarding the health/disability issues relating to the complainants' son. This was an occasion for Mr Hakaoro's wife to discuss the credibility and honesty of the complainants, of which she had a negative opinion.

Mr Hakaoro's wife discusses sexual matters with the complainants

[56.11] Mr Hakaoro's wife said that she related, what she said was a true story, of sexual exploitation of a migrant. She thought the story amusing and expected the complainants to enjoy it, and they did. Mr Hakaoro was not involved in this discussion.

[56.12] However, the discussion went on and when Mr Hakaoro returned he confirmed the truth of the story.

Government payments

[56.13] Mr Hakaoro did indicate that if the complainants provided birth certificates, then payments of \$100 per week would be available. Mr Hakaoro was aware of these matters as he is a qualified social worker.

Deportation of the complainants' relative's partner

[56.14] Mr Hakaoro's wife related the background concerning the partner of a family member of the complainants facing deportation. She said Mr Hakaoro's advice was that his services would cost \$5,000 to assist, but in this instance, he would act for a "donation" and not otherwise claim a fee.

[56.15] A donation of \$1,000 was made.

[56.16] There was nothing unusual or unprofessional in the consultation.

[56.17] She did not produce any documents showing an engagement in accordance with the Code of Conduct.

Allegation of conspiracy to deceive Immigration New Zealand

[56.18] Mr Hakaoro's wife said that the complainants wanted the medical report in relation to their son for the purpose of deceiving Immigration New Zealand. In particular, they were intending to represent (falsely) that the partner of the person being deported was his caregiver.

[56.19] She did not explain the basis for reaching this conclusion.

Mr Hakaoro reports complainants to Immigration New Zealand

[56.20] Mr Hakaoro said to his wife that he was obliged to report the family to Immigration New Zealand under sections 342(1)(a)(i), and 345(1)(a) and (b) of the Immigration Act 2009, and clause 2.1(a) of the Code of Conduct.

[56.21] These provisions respectively make it an offence to provide false information and use a false identification document, and require licensed immigration advisers to act in accordance with the laws of New Zealand.

[56.22] Mr Hakaoro's wife did not explain why that gave Mr Hakaoro either the duty or right to disclose information to Immigration New Zealand in the absence of Immigration New Zealand using statutory powers to obtain information.

Passports demanded on 27 October 2011

[56.23] The complainants came to the home of Mr Hakaoro on 27 October 2011. They arrived unannounced and interrupted a meeting with Pastor Teinapi Tauri.

The complaint

[56.24] Mr Hakaoro's wife characterised correspondence from the complainants' lawyer as threats.

Pastor Teinapi Tauri's affidavit

[57] Pastor Teinapi Tauri's affidavit said that the complainants had interrupted a prayer session on 27 October 2011 at Mr Hakaoro's office.

[58] He said the complaints were "rude and uncivilised". He also took issue with the complainants saying that they sought "their Passports, File and Full Refund." He said they only asked for their passports.

Mr Hakaoro's affidavit

[59] Mr Hakaoro's affidavit discussed his work background and qualifications. It indicates that Mr Hakaoro would be well aware of the sort of conduct that is acceptable in a professional practice.

[60] Mr Hakaoro said that he was being "falsely accused" and "maliciously ridiculed", and the complaint is false and malicious. He is in positions of "esteem and noble standing".

[61] He adopted the contents of his wife's affidavit.

[62] Mr Hakaoro said that he delivered the passports to the Immigration New Zealand compliance officer, as:

[62.1] He appropriately discussed the case in anticipation of lodging the section 61 application.

[62.2] The compliance officer said that what the complainants had done was a crime.

[62.3] The officer said he was “invoking the statutory provisions which you are aware of and taking the Passports with me”.

The Tribunal’s Minute

Purpose of Minute

[63] On 3 December 2012, the Tribunal issued a Minute, which explained the Tribunal had conducted a review of the material then before the Tribunal. The Minute identified apparent issues, potential factual findings, and emphasised that the parties would have the opportunity to respond, and that the Tribunal had reached no conclusions at that point.

[64] The key elements of the complaint, and the response identified in the Minute, were as outlined above.

[65] The Authority and the complainants do not lay charges, and are not responsible to prove them. The Tribunal is an expert body with inquisitorial and adjudicative functions, which receives complaints, and determines whether the proof before it is adequate to uphold the complaint, and if so in what respects. Accordingly, the Minute identified issues and potential conclusions on the material presented before the Tribunal in order to give the parties the opportunity to consider their positions and provide submissions and further proof if they wish.

[66] The Minute stated, on the papers before the Tribunal at the time, the following findings below appeared to be open.

Potential conclusions notified in the Minute

Improperly procuring fees, failing to initiate the client relationship in accordance with the Code, and failing to provide services with intent to keep the fees

[67] A potential view of the facts was that Mr Hakaoro made no effective attempt to evaluate whether an application under section 61 would succeed, he procured the payment of fees with no real regard to the work required or the proper fee, and he failed to advise his clients of their immigration prospects.

[68] Further, Mr Hakaoro wholly failed to comply with the requirements of the Code in relation to initiating a client relationship.

[69] He issued two receipts indicating payments had been received for purposes other than immigration services.

[70] The view was potentially open that the issuing of receipts which stated that the payments were for “job offers” was part of a dishonest enterprise. They were issued in that way to disguise the fact that Mr Hakaoro had procured the payments as a licensed immigration adviser for immigration services, when he had not complied with the Code. It appeared that Mr Hakaoro had no written agreement and had not complied with the Code’s disclosure requirements.

[71] In this regard the Tribunal would potentially give weight to Mr Hakaoro’s letter of 23 September 2011, which clearly states that Mr Hakaoro was providing immigration services (refer [16]– [19] above).

- [72] Further, in terms of immigration law and practice it made no sense for Mr Hakaoro to be concerned primarily with employment and subsequently with gaining the complainants lawful status in New Zealand.
- [73] The complainants were in no position to seek a work permit. Without a work permit, or at least the realistic prospect of getting one, they could not expect to get an offer of employment, and an offer of employment would not assist with an application under section 61.
- [74] Where a person has had some irregularity with a work permit, an offer of employment may well be relevant to an application under section 61. However, that was not the complainants' circumstances.
- [75] The only potential ground for a section 61 application would be the humanitarian circumstances of the family, and employment issues would be relevant only if a visa could be secured due to the humanitarian factors.
- [76] The Tribunal had taken a preliminary view of the material submitted by Mr Hakaoro in support of his claim that the initial work related to a "job offer", not immigration services. The key elements are:
- [76.1] two receipts marked "job offer";
 - [76.2] a document which purports to be a letter dated 23 September 2011 written to his wife saying one of the complainants required a "job offer"; and
 - [76.3] a letter dated 27 September 2011 which purports to be an offer of employment from Forbury Construction Ltd.
- [77] On the material then available, the Minute notified Mr Hakaoro that the Tribunal may consider that the evidence of the complainants should be accepted. They had said they engaged Mr Hakaoro to provide immigration services and that was what he requested payment for. They never saw any of this material, and there was no interview with the prospective employer.
- [78] However, the material potentially left open the conclusion that not only should the Tribunal prefer the evidence of the complainants, but it should find that this material was manufactured to respond to the complaint; as the complainants alleged.

Whether Mr Hakaoro manufactured a dishonest response to the complaint

- [79] The Minute noted the Tribunal was required to determine the complaint on the balance of probabilities; however the test must be applied with regard to the gravity of the finding (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1). The complaint included elements which are at the highest end of the scale, and in particular, a finding that a response to the complaint has been dishonestly manufactured.
- [80] The Minute put Mr Hakaoro on notice the material raised the following issues.
- [81] Mr Hakaoro's letter of 23 September 2011 to his wife was not consistent with the evidence of the complainants, or with the other material before the Tribunal.
- [82] The Minute noted the Tribunal may, in addition, have regard to:
- [82.1] The inherent implausibility of writing such a letter when his wife was integrally involved in the discussion with the complainants.
 - [82.2] The implausibility of Mr Hakaoro writing that his client "requires a 'job offer' for the purpose of a work visa under section 61" when, his clients' only likely grounds for the favourable exercise of section 61 discretion were humanitarian grounds and an alleged irregularity of process when the family previously left New Zealand. The Minute noted that Mr Hakaoro appeared to recognise such inconsistency in his letter to the complainants dated 23 September.

- [82.3] The connotation in the letter that the “job offer” was to be *pro forma* and purchased for \$3,000. The letter contained no information regarding skills, availability for interviews or other matters that would be pertinent to a genuine attempt to seek employment. The only material matter was to say that the complainant could not communicate in English, and job opportunities were accordingly restricted.
- [82.4] The statement “these documents would be issued to the client on full payment of the fee of \$3,000” was not consistent with a genuine process of seeking employment.
- [83] The letter of 27 September 2011 containing a job offer, purportedly signed by Natasha Kaho, had not been authenticated:
- [83.1] There was no evidence from Ms Kaho or other persons who could confirm that Ms Kaho undertook the inquiries and processes that a genuine employer would undertake.
- [83.2] The Minute put Mr Hakaoro on notice that it has the power to summons witnesses, and he may apply to the Tribunal to exercise that power in relation to Ms Kaho.
- [84] Mr Hakaoro’s wife had produced documents which purport to be contemporaneous file notes that supported the narrative provided as a response to the complaint. The Minute questioned whether the notes were of the kind that are conventionally taken as contemporaneous notes. They contained observations, which were most surprising to find in such a context. For example, recording that Mr Hakaoro was a “fully licensed adviser”, and that he “listened carefully”.
- [85] The file notes presented also contained elements which were not otherwise consistent with the written record. For example, the statement:
- “The cost of a Job Offer is \$3,000 we pay an Employment Broker to find a job for you.”
- [86] The Minute noted that such statement was not consistent with Mr Hakaoro’s contemporaneous letter and there was no evidence from an employment broker, yet there is a letter purporting to be an offer of employment. The Tribunal noted in the Minute that the Tribunal might, on application, issue a summons to the employment broker and have them produce their bank records relating to payment. Without such evidence, the view may be open that the record was not genuine. It was for Mr Hakaoro to apply for the issue of witness summonses if that was his position.
- [87] The complainants’ file notes record Mr Hakaoro as saying:
- “You pay the Job Offer first after you paid your Job Offer then we deal with the rest.”
- [88] For the reasons discussed in the Minute, on the information then available to the Tribunal, the statement made no sense in terms of immigration law and practice, or in terms of the parts of the contemporaneous record that can be authenticated.
- [89] The file notes generally contained self-serving statements that were consistent with a response tailored to the complaint, and would be most surprising as a contemporaneous record of the professional consultation that resulted in Mr Hakaoro’s letter of 23 September 2011.
- [90] Mr Hakaoro’s wife claimed that whenever a woman was present she would attend consultations to protect Mr Hakaoro from allegations of sexual misconduct. As the relevant consultation was with a married couple, this claim was not sensible.
- [91] Routine office meetings with couples, the Minute suggested, did not require a chaperone; however this meeting did require Mr Hakaoro’s wife as an interpreter. The Minute gave notice the view was open that Mr Hakaoro’s wife has been willing to tailor her description as she saw effective to respond to the complaint, and in doing so presented a description that had little connection with reality.

- [92] The Minute noted that similar observations could be made of her claim that the complainants were given a discounted fee of \$3,000 rather than that sum on a per head basis, given the grounds were identical and interrelated.
- [93] Mr Hakaoro was given notice the Tribunal may conclude his response to the complaint had been manufactured and was false. He would be given every opportunity to present a case meeting that concern, including a consideration of any application to summons witnesses if necessary or appropriate.

Misrepresentations

- [94] The Minute indicated the view was open on the evidence before the Tribunal that Mr Hakaoro misrepresented that the complainants were immune from being deported after he was engaged and while he undertook processes.
- [95] Further, Mr Hakaoro falsely represented that he had inappropriate influence with Immigration New Zealand for the purpose of causing the complainants to believe he could provide a different outcome from previous advisers. He did this knowing it was unlikely he could lodge a successful application, and it was part of securing fees to which he was not entitled.

Failure to account for client funds

- [96] The Minute also indicated the view may be open that the whole payment of \$2,000 was client funds, as Mr Hakaoro was paid the fees in advance and he was not entitled to such fees (having not provided the services and not initiated a client relationship in accordance with the Code).
- [97] Clause 4 of the Code requires that client funds paid in advance for fees must be banked separately. They are in effect funds held in trust, and Mr Hakaoro was required to account for them as a trustee.
- [98] Mr Hakaoro was invited to provide evidence of him banking the fees and dealing with them as client funds. In the absence of such evidence, the Minute indicated the view may be open that Mr Hakaoro had misappropriated the funds.

Demanding and retaining excess fees

- [99] The Minute also indicated on the material then before the Tribunal (regardless of the potential finding of dishonestly procuring the fees), the view was open that Mr Hakaoro did not provide professional services that reflected the fees he demanded and retained.
- [100] Mr Hakaoro was put on notice that the view may be open that:
- [100.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [100.2] The fee was not fair and reasonable, either at inception or when his engagement terminated.
- [100.3] That clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.
- [100.4] That the fees were repayable as they were not fair or reasonable.
- [100.5] He breached the Code by failing to refund fees.
- [101] The Tribunal was conscious Mr Hakaoro had not produced the relevant records, and the material before the Tribunal indicated there was no attempt to comply with the Code.

Unprofessional language and discussion

- [102] The Minute indicated the complainants had given a clear account of Mr Hakaoro using foul language, and a wholly inappropriate discussion of sexual matters.
- [103] His wife said there was a sexual discussion relating to immigration, but it was her discussion and everyone was a willing participant.
- [104] The discussion Mr Hakaoro's wife described has no place in a professional setting, and she said Mr Hakaoro was aware of the discussion, at least after the event, as he was asked to confirm the truth of it.
- [105] However, the complainants said Mr Hakaoro's topics of discussion and use of language were vile, and wholly unprofessional.
- [106] The Minute indicated the view was open that the Tribunal should prefer the account of the complainants. Further, for the reasons identified, the Tribunal may reach the view the complainants had given an accurate and truthful account that conformed with, and was supported by the written record, as far as it extends.
- [107] In contrast, the Minute gave notice the view may be open that Mr Hakaoro and his wife had dishonestly fabricated an account in response to the complaint. Further, Mr Hakaoro's wife's attempt to say she engaged in a wholly inappropriate discussion, and Mr Hakaoro had a lesser role, could not be preferred to the complainants' account.
- [108] The view is also potentially open that the account given by Mr Hakaoro and his wife was a dishonest one.

Disclosure of information to Immigration New Zealand

- [109] The Minute noted there was no doubt that for Mr Hakaoro to act for the complainants he needed to disclose their identity to Immigration New Zealand. They were in New Zealand unlawfully, and he could not make any application without identifying them.
- [110] His papers also rightly identify that prior to lodging an application he would likely need to make inquiries with Immigration New Zealand regarding his clients' immigration history.
- [111] Accordingly, if Mr Hakaoro's explanation was that he discussed the case with a compliance officer and that officer exercised statutory powers to seize passports, there could be no criticism of Mr Hakaoro in relation to those events.
- [112] However, the allegation Mr Hakaoro faced was that he voluntarily provided the complainants and their family's passports to Immigration New Zealand and sought to expedite their deportation, which is quite a different matter.
- [113] The complaint was supported by an email from the compliance officer dated 16 November 2011, which says:

"I was visiting Mr Hakaoro on a different matter and he passed me this family's passports as they are unlawfully in New Zealand."
- [114] It was also supported by the officer's later email of 30 November 2011 (refer [47] above).
- [115] This account from the compliance officer was not consistent with Mr Hakaoro's claim he was assisting the family, or that the officer used coercive powers.
- [116] Further the Minute noted it would be most surprising that a compliance officer, when first approached by a licensed immigration adviser regarding putting a family's immigration affairs in order, would react by saying that the complainants had acted criminally and seize their passports

- [117] Mr Hakaoro had accepted instructions to pursue a section 61 application on grounds he, presumably, was satisfied had merit. Immigration New Zealand might be expected to exercise some degree of co-operation when a person who was unlawfully in New Zealand has taken the initiative of engaging a licensed immigration adviser and approached Immigration New Zealand with a case that had some merit. It was noted in the Minute that that was the experience of this Tribunal in the past.
- [118] Accordingly, the view was potentially open on the material then available that Mr Hakaoro did not take any substantial action in pursuance of his instructions. His principal action was to take a step intended to initiate deportation, and he delivered over his clients' passports and made adverse comments about them, as it was convenient for him to have them deported.
- [119] Such conduct was both unprofessional and dishonest. Mr Hakaoro had instructions to approach Immigration New Zealand on the basis of making an application under section 61; it was his duty to fulfil that instruction, and the view was open that his professional obligations required him to do that.

Mr Hakaoro's claim there was no complaint in law

- [120] The Minute noted Mr Hakaoro's claim that there was no legally valid complaint before the Tribunal appeared not to be grounded in law or sensible reasoning. This was a very serious complaint, supported by evidential material, and it had been processed in accordance with the Act.

Notice of the grounds on which complaint may be upheld

- [121] The Minute noted that the Tribunal, on the material then before it at that point, would potentially conclude the complaint should be upheld.
- [122] Further, the potential findings included that Mr Hakaoro had dishonestly manufactured a response to the complaint. That was not a ground of the present complaint, however such a finding would potentially be relevant if the complaint was upheld in relation to sanctions. For that reason Mr Hakaoro was put on notice that he should consider that potential finding and respond as he saw fit.

Notice of opportunity to respond

- [123] The Minute noted the seriousness of the complaint against Mr Hakaoro and the findings that could be made, and noted he should consider taking legal advice.
- [124] The Minute noted that section 49(3) of the Act provides "complaints must be heard on the papers". There is, however, power to request that a person appear before the Tribunal pursuant to section 49(4).
- [125] Given the seriousness of the complaint, and the issues relating to credibility, the Minute noted the Tribunal would be conscious to ensure Mr Hakaoro had the opportunity to present a defence in a manner that is not limiting, and would accordingly give full consideration to an application to conduct an oral hearing.
- [126] The Minute also noted that there was power to summons witnesses if an oral hearing was allowed. Any application for that step should explain the grounds on which the application is made and be supported by affidavits containing any evidence the party sought to present.

Oral Hearing

- [127] In the course of a series of interlocutory steps, the Tribunal determined that there should be an oral hearing. Mr Hakaoro did not comply with the direction to supply affidavit evidence. The interlocutory process is recorded in minutes, and it is not necessary to detail the steps.

- [128] It is sufficient to note that when the hearing commenced Mr Hakaoro represented himself, and for the last two days, after an adjournment, Mr Sutton represented him. At the point the hearing resumed the complainants had given their evidence, and Mr Hakaoro had given his evidence in chief, and was being cross-examined. The Tribunal issued a minute indicating that if there was an application to recall the complainants it would be considered. In the event there was no application for recall, matters would proceed from that point with some flexibility to ensure that Mr Sutton had the opportunity to address any issues he considered appropriate.
- [129] The Tribunal is required to hear complaints on the papers, unless it is necessary to require attendances before the Tribunal. The Tribunal deals with matters with inquisitorial and adjudicative powers as complainants and the Registrar are not required to prosecute complaints. Accordingly, the purpose of the oral hearing was for the Tribunal to review the evidence, and importantly to allow Mr Hakaoro to challenge the evidence and present his defence to the complaint. He was provided the opportunity to challenge the complainants by cross-examination and call his own evidence.
- [130] The complainants both gave evidence and affirmed the complaint which has been outlined previously.
- [131] Mr Hakaoro was not permitted to cross-examine the complainants in person and was required to do that through the Chairperson. The reasons were set out in a minute issued by the Tribunal. As noted, he was given the opportunity to apply to have the witnesses recalled for cross-examination by his counsel, but there was no application.
- [132] The challenges to the complainants in cross-examination focused on the process of preparing the evidence in support of the complaints. The principle point raised by Mr Hakaoro was that the complainants must have fabricated the complaint regarding his use of foul language and discussion of sexual matters. That, Mr Hakaoro suggested, was because they did not speak English and Mr Hakaoro did not speak their first language. He suggested it followed they could not have heard and recorded what they allege he said in English. The male complainant said his wife explained to him what was said; and she said that she did understand and speak English sufficiently well to know what Mr Hakaoro said.
- [133] It became evident that the female complainant was able to relate what Mr Hakaoro was alleged to have said as, despite giving evidence through an interpreter, she had no difficulty quoting what Mr Hakaoro said in English. Mr Hakaoro's wife subsequently gave evidence and she said that the female complainant could communicate competently in English.
- [134] In support of his case Mr Hakaoro gave evidence himself, and in addition his wife and Pastor Teinapi Tauri gave evidence for Mr Hakaoro.
- [135] The Authority called Mr Brendan Chase, an immigration officer regarding the process of taking passports that the complainants and their family had left with Mr Hakaoro.

Discussion

Improperly procuring fees, failing to initiate the client relationship in accordance with the Code, and failing to provide services with intent to keep the fees

- [136] Mr Hakaoro was required to answer the evidence that he:
- [136.1] Made no effective attempt to evaluate and advise whether an application under section 61 would succeed;
 - [136.2] Procured the payment of fees with no real regard to the work required or the proper fee;
 - [136.3] Wholly failed to comply with the requirements of the Code in relation to initiating a client relationship; and

- [136.4] He had the dishonest intention of procuring fees, not providing services, and keeping the fees.
- [137] Mr Hakaoro accepted he had not complied with the Code, but claimed he was not required to do so. His contention had two limbs:
- [137.1] First he only had an initial immigration consultation which cost \$50 (and he was not paid), and at the time he and others understood such an initial consultation did not require formal documentation.
- [137.2] Second, though his clients paid \$2,000 it was for his wife's job search services, and that was only part payment of the full fixed fee of \$3,000.
- [138] Mr Hakaoro pointed to the two receipts being issued indicating payments had been received for purposes other than immigration services, namely employment related services.
- [139] Mr Hakaoro was on notice the view was potentially open that issuing receipts saying that the payments were for "job offers" was part of a dishonest enterprise. They were issued in that way to disguise the fact that Mr Hakaoro had procured the payments as a licensed immigration adviser for immigration services, when he had not complied with the Code. Mr Hakaoro had no written agreement and had not complied with the Code's disclosure requirements, despite writing to his clients regarding immigration services.
- [140] Mr Hakaoro and his wife when giving oral evidence both maintained the focus had shifted entirely from immigration services to job search services for a fee of \$3,000. There was however no written communication of this to the complainants, other than the narration on the receipts. This Mr Hakaoro said was culturally appropriate, as written communications were not used. However this explanation has to be placed alongside the fact Mr Hakaoro did communicate with his clients in writing, and in a way that was not consistent with his claim.
- [141] Mr Hakaoro's letter of 23 September 2011, clearly states that Mr Hakaoro was providing immigration services (refer [16]–[19] above). He had no sensible explanation for the inconsistency in his explanation.
- [142] Further, in terms of immigration law and practice it make no sense for Mr Hakaoro to be concerned primarily with employment, and subsequently with gaining the complainants lawful status in New Zealand.
- [143] The complainants were in no position to seek a work permit on the grounds of having an offer of employment. Without a work permit, or at least the realistic prospect of getting one, they could not expect to get an offer of employment and an offer of employment would not assist with an application under section 61.
- [144] Where a person has had some irregularity with a work permit, an offer of employment may well be relevant to an application under section 61. However, that was not the complainants' circumstances. They did have two children who were New Zealand citizens by birth, one of their children has a disability, and potentially those and other matters were material.
- [145] The only apparent potential ground for a section 61 application would be the humanitarian circumstances of the family, and employment issues would be relevant only if a visa could be secured due to the humanitarian factors.
- [146] Mr Hakaoro's wife said in her affidavit that Mr Hakaoro had advised the complainants:
- "If we are successful with a 'section 61 Application' we will then apply for either a Work or Visitor Visa. **Job offers are then needed to be applied for ...**" (emphasis added)
- [147] That is entirely consistent with what the complainants say of Mr Hakaoro's advice, and irreconcilable with the position Mr Hakaoro adopted, denying he was engaged to deal with a section 61 application. Neither Mr Hakaoro nor his wife could offer an explanation that could explain or reconcile that statement with Mr Hakaoro's present position.

- [148] The complainants were clear they did not understand that in the course of the eight visits to Mr Hakaoro they were dealing with him or his wife in relation to employment services; they were getting immigration advice. Mr Hakaoro and his wife accept, apart from the receipts, the only written communication from them was a letter dated 23 September 2011 from Mr Hakaoro that clearly identified immigration issues and referred to a fee of \$3,000. That letter is consistent with their evidence.
- [149] Mr Hakaoro and his wife produced other written materials they claimed were genuine contemporaneous records that supported their claim there was a switch from immigration to employment services. They relied on:
- [149.1] The two receipts that referred to "job offer";
- [149.2] A document which purports to be a letter dated 23 September 2011 written by Mr Hakaoro to his wife saying one of the complainants required a "job offer";
- [149.3] Notes taken by Mr Hakaoro's wife of the first meeting between Mr Hakaoro and the complainants; and
- [149.4] A letter dated 27 September 2011 which purports to be an offer of employment from Forbury Construction Ltd.
- [150] None of this material, except the receipts, was ever shown to the complainants until they lodged their complaint. Further they were never asked to undergo processes such as a job interview with the prospective employer.
- [151] The circumstances were such that the Tribunal had put Mr Hakaoro on notice that it would potentially find the material was manufactured as a response to the complaint, and not genuine contemporaneous records as he claimed. Mr Hakaoro made it clear his position was that the complainants had been dishonest, lied to him and were responsible for their own difficulties. It has been necessary to address the reliability of the evidence of the witnesses.
- [152] As noted the Tribunal is required to determine the complaint on the balance of probabilities; however the test must be applied with regard to the gravity of the finding. The complaint includes elements which are at the highest end of the scale, and I must apply the standard of proof on the most stringent basis.
- [153] Mr Hakaoro's letter of 23 September 2011 to his wife was not consistent with the evidence of the complainants, or the other material before the Tribunal. In their oral evidence Mr Hakaoro and his wife could provide no sensible explanation for the letter being written. The letter was a strange communication for a husband and wife to exchange, and even more peculiar when they were both present at the meeting it referred to. They both claimed they had previously had a great deal of trouble with clients who had confused immigration and employment search fees, had taken legal advice and been advised they should have a written letter of that kind between them to avoid confusion.
- [154] The proposition was not supported to be evidence from a person saying they gave such advice. Furthermore, the proposition does not make sense, and neither Mr Hakaoro nor his wife could explain how they perceived such steps as sensible.
- [155] The contents of the letter from Mr Hakaoro to his wife had to go to the clients. The concern on their account was that clients were confused about immigration fees and employment fees. There could be no rational reason for writing to a client and saying they were to pay \$3,000 for immigration services and on the same day write to someone else and say, to the contrary, that the initial services were employment services.
- [156] Furthermore:
- [156.1] It was inherently implausible to write such a letter when the two spouses were integrally involved in the discussion.

- [156.2] It was implausible Mr Hakaoro would write and say his client “requires a ‘job offer’ for the purpose of a work visa under section 61” when, his clients’ only likely grounds for the favourable exercise of section 61 discretion were humanitarian grounds and an alleged irregularity of process when the family previously left New Zealand. Mr Hakaoro appeared to recognise that in his own letter to his clients of the same date.
- [156.3] There is a connotation in the letter that the “job offer” was to be *pro forma* and purchased for \$3,000. The letter contained no information regarding skills, availability for interviews or other matters that would be pertinent to a genuine attempt to seek employment. The only material matter was to say that the complainant could not communicate in English, and job opportunities were accordingly restricted.
- [156.4] The statement, “these documents would be issued to the client on full payment of the fee of \$3,000”, was not consistent with a genuine process of seeking employment.
- [157] The letter of 27 September 2011 containing a job offer, purportedly signed by Natasha Kaho, has not been authenticated; it is in fact grossly irregular.
- [158] In the course of cross-examination it emerged the claimed employment search process did not have the essential steps required. The complainants never saw the letter Mr Hakaoro produced as an offer of employment. Mr Hakaoro accepted that was the case; he explained that on the basis that until they paid another \$1,000 they would not be allowed to see it.
- [159] Mr Hakaoro and his wife also admitted they produced the offer of employment in their own office, and it included their own fax number on what purports to be the letterhead of the prospective employer. That means of production of the document was consistent with the language that suggested the employment offer could be purchased. Mr Hakaoro and his wife claimed that they had none the less undertaken a genuine employment search, and the prospective employer had a family connection with Mr Hakaoro’s wife. They say Mr Hakaoro was authorised to type out the offer of employment, and did so in his office. However, the documents referred to in the offer of employment cannot be produced.
- [160] Significantly, Mr Hakaoro and his wife admit, and the complainants confirm, there was no process to evaluate skills, personality fit, the likely commitment and the other matters prospective employers and employees evaluate. There was no interview, meeting, or other personal contact between either of the complainants and the prospective employer.
- [161] The purported job offer could not have been produced to Immigration New Zealand as a genuine offer of employment. Had Immigration New Zealand been aware of the circumstances, it would have been rejected as not being genuine. Mr Hakaoro as a licensed immigration adviser must have been aware of what is required to establish a genuine offer of employment. I am satisfied the job offer was manufactured as part of Mr Hakaoro’s response to this complaint. His own admissions regarding the absence of essential processes and the positive evidence regarding Mr Hakaoro typing out the letter in the absence of those processes satisfy me that was the case.
- [162] Mr Hakaoro’s wife produced documents which purport to be contemporaneous file notes that support the narrative provided as a response to the complaint. The notes were not of the kind that are conventionally taken as contemporaneous notes. They contained observations, which were most surprising to find in such a context. For example, recording that Mr Hakaoro was a “fully licensed adviser”, and that he “listened carefully”.
- [163] The file notes presented to the Tribunal also contained elements which were not consistent with the written record. For example, the statement:
- “The cost of a Job Offer is \$3,000 we pay an Employment Broker to find a job for you.”
- [164] That was not consistent with Mr Hakaoro’s contemporaneous letter and Mr Hakaoro and his wife admitted there was no employment broker, and the \$2,000 had been taken for their personal use. They accepted the \$2,000 was deposited into Mr Hakaoro’s wife’s personal account.

[165] The file notes say Mr Hakaoro said:

“You pay the Job Offer first after you paid your Job Offer then we deal with the rest.”

[166] As noted, the statement made no sense in terms of immigration law and practice, or in terms of the parts of the contemporaneous record that can be authenticated. It is also irreconcilable with what Mr Hakaoro’s wife’s affidavit says Mr Hakaoro said at the time (refer para.[146] above).

[167] The file notes generally contained self-serving statements that were consistent with a response tailored to the complaint, and would be most surprising as a contemporaneous record of the professional consultation that resulted in Mr Hakaoro’s letter of 23 September 2011.

[168] I am satisfied that the account given by the complainants in their complaint is true, and I accept it. The effect of the evidence is that they engaged Mr Hakaoro to provide immigration advice and services. They returned repeatedly to his office, they provided their passports to him, and they paid him \$2,000 towards the \$3,000 he told them they had to pay to receive the immigration services he promised.

[169] I have considered Pastor Teinapi Tauri’s evidence. However, he was able to add little other than to express his view that the complainants had been rude when coming to Mr Hakaoro’s home, entering without knocking and demanding their passports. The Pastor was not privy to how Mr Hakaoro had behaved on previous occasions, so that added little to the relevant information. Indeed, their state of agitation he described was consistent with their complaints regarding Mr Hakaoro’s conduct leading to that occasion. The Pastor did confirm the complainants had sought the return of their passports prior to Mr Hakaoro giving them to Mr Chase without authority.

[170] Mr Hakaoro failed to comply in any significant way with the Code of Conduct.

[171] He made no effort to either perform the instructions he received or end the instruction. Mr Hakaoro has provided no evidence of progressing a section 61 application, and on the contrary, he says he did not do so.

[172] I reject Mr Hakaoro’s claim that fees were taken from the complainants for employment services. I find that his explanation relies on documents produced in response to the complaint. I do not accept they existed at the time, and I accept the complainants’ evidence they engaged Mr Hakaoro to provide immigration services. Mr Hakaoro failed to meet his professional obligations when acting as a licensed immigration adviser.

[173] This ground of the complaint is upheld:

[173.1] Mr Hakaoro failed to evaluate and advise his clients of their immigration prospects. He failed to meet the requirements of Clause 1 of the Code of Conduct. In particular that he lacked care, was unprofessional and furthermore was negligent and incompetent. This ground of complaint is upheld under section 44(2)(a), (b) and (e) of the Act.

[173.2] He procured the payment of fees with no effective regard to the work required or the proper fee. He did so without complying with Clause 8 of the Code of Conduct. This ground of complaint is upheld under section 44(2)(e) of the Act.

[173.3] Further, he wholly failed to comply with the requirements of the Code in relation to initiating a client relationship, as required by Clause 1.4, 1.5, and 9 of the Code of Conduct. This ground of complaint is upheld under section 44(2)(e) of the Act.

[173.4] I am satisfied Mr Hakaoro had no intention of providing the services he agreed to provide; his intention was to retain the fees he received and expected his clients would

be deported and he would not be held to account. That amounts to dishonest behaviour, and this ground of complaint is upheld under section 44(2)(d).

Misrepresentations

- [174] The complaint alleges Mr Hakaoro misrepresented to the complainants that they were immune from being deported after he was engaged while he undertook processes.
- [175] Further, that Mr Hakaoro falsely represented he had inappropriate influence with Immigration New Zealand for the purpose of causing the complainants to believe he could provide a different outcome from previous advisers. He did this knowing it was unlikely he could lodge a successful application, and it was part of securing fees to which he was not entitled.
- [176] There has been no challenge to the evidence the complainants brought regarding this evidence. I accept the evidence. For the reasons discussed, where the complainants' evidence and Mr Hakaoro and his wife's evidence differ, I accept the complainants' evidence. The same applies to Mr Chase; I accept his evidence as correct and he provided some confirmation that Mr Hakaoro had misrepresented his relationship with Immigration New Zealand and its officers.
- [177] I am satisfied this ground of complaint must be upheld as it amounted to misleading and dishonest behaviour. Accordingly, it is upheld under section 44(2)(d).

Failure to account for client funds

- [178] An element that arose from the facts alleged in the complaint was that the whole payment of \$2,000 was client funds, as Mr Hakaoro was paid the fees in advance and he was not entitled to such fees (having not provided the services and not having initiated a client relationship in accordance with the Code).
- [179] Clause 4 of the Code requires that client funds paid in advance for fees must be banked separately. They are in effect funds held in trust, and Mr Hakaoro was required to account for them as a trustee.
- [180] Mr Hakaoro and his wife accepted in evidence they use the payment for their own purposes, and Mr Hakaoro says that he was doing nothing toward his engagement to provide immigration services.
- [181] I am satisfied Mr Hakaoro procured the fees by representing that the payments would be received for immigration services, and he did not provide such services. I am satisfied that instead of treating the fees as client funds as required he misappropriated them and used them for his own purposes. It follows that this aspect of the complaint is upheld as a breach of Clause 4 of the Code, and also dishonest behaviour. This ground of complaint is upheld under section 44(2)(d) and (e) of the Act.

Demanding and retaining excess fees

- [182] The complaint raised the ground that Mr Hakaoro did not provide professional services that reflected the fees he demanded and retained.
- [183] The relevant grounds being:
- [183.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.
- [183.2] The fee was not fair and reasonable, either at inception or when his engagement terminated.
- [183.3] That clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.

[183.4] That the fees were repayable as they were not fair or reasonable.

[183.5] He breached the Code by failing to refund fees.

[184] Mr Hakaoro accepts he did nothing significant in relation to providing immigration services; this aspect of the complaint is made out and upheld under section 44(2)(e) of the Act.

Unprofessional language and discussion

[185] The complainants gave a clear account of Mr Hakaoro using foul language, and a wholly inappropriate discussion of sexual matters.

[186] His wife said there was a sexual discussion relating to immigration, but it was her discussion and everyone was a willing participant. Mr Hakaoro and his wife claimed the evidence of the complainants on this issue was fabricated.

[187] Mr Hakaoro's wife said she initiated a discussion relating to a woman from her own place of birth, and she was deeply ashamed of the story as she came from the same place. She said that was the extent of the discussion relating to sexual issues. Her evidence made no sense, as there was no reason to tell such a story if she found it embarrassing.

[188] I accept the evidence of the complainants that:

[188.1] Mr Hakaoro used foul language to say that he should not be trifled with; and

[188.2] Embarked on a discussion of sexual matters which have no place in a professional consultation, including discussing his own libido.

[189] Mr Hakaoro attacked their credibility on the basis the Complainants were unable to record English language communications. As noted, that claim was unfounded (refer para.[132] and [133] above).

[190] I have found the evidence of Mr Hakaoro and his wife to be unreliable and tailored to meet the complaint. The complainants' evidence is consistent with the written record where available, and is plausible. Mr Chase has also given evidence that is inconsistent with Mr Hakaoro. Mr Chase was essentially independent and his evidence unlike Mr Hakaoro's was consistent with what an immigration officer would be expected and required to do (discussed below). Finding Mr Hakaoro's evidence must be rejected in favour of Mr Chase's account has contributed to my conclusion Mr Hakaoro's evidence was unreliable.

[191] I uphold this aspect of the complaint, the behaviour was unprofessional, and accordingly in breach of Clause 1 of the Code of Conduct. This aspect of the complaint is made out and upheld under section 44(2)(e) of the Act.

Disclosure of information to Immigration New Zealand

[192] For Mr Hakaoro to act for the complainants he needed to disclose their identity to Immigration New Zealand. They were in New Zealand unlawfully, and he could not make any application without identifying them.

[193] His papers also rightly identify that prior to lodging an application he would likely need to make inquiries with Immigration New Zealand regarding his clients' immigration history.

[194] Mr Hakaoro claimed he discussed the case with a compliance officer and that officer exercised statutory powers to seize passports. If that was correct, there could be no criticism of Mr Hakaoro in relation to those events.

[195] However, the allegation Mr Hakaoro faced is that he voluntarily provided the complainants and their family's passports to Immigration New Zealand and sought to expedite their deportation, which is quite a different matter. When giving oral evidence Mr Hakaoro initially claimed the

immigration officer exercised powers to take the passports he said were “taken under law”, and he denied that he “volunteered” his clients to Immigration New Zealand.

- [196] Mr Chase gave evidence and made it clear he did not accept the account Mr Hakaoro had given. He said that Mr Hakaoro had given him the passports of the complainants and their family, and made adverse comments about them. Mr Hakaoro did later admit in evidence he did that, and claimed he was acting in the interest of the citizens of New Zealand.
- [197] I accept Mr Chase’s evidence which is inconsistent with Mr Hakaoro’s evidence. Mr Hakaoro’s initial evidence of an immigration officer seizing passports was not consistent with how Immigration New Zealand deals with passports, and had the appearance of being tailored to meet the complaint. I am satisfied Mr Chase provided an accurate account of what occurred and that he acted appropriately. It follows I must take the view Mr Hakaoro’s initial evidence was tailored to meet the complaint.
- [198] Mr Hakaoro had accepted instructions to pursue a section 61 application. Mr Hakaoro can only accept such instructions if he thought the proposed application had merit. Accordingly, Immigration New Zealand might be expected to exercise some degree of co-operation when a person who was unlawfully in New Zealand has taken the initiative of engaging a licensed immigration adviser and approached Immigration New Zealand with a case that had some merit. When Mr Hakaoro first had contact with Immigration New Zealand Mr Hakaoro did not raise those grounds, instead he disparaged the family and provided an assessment of them that was calculated and intended to support them being deported. He had earlier refused to return the passports when the complainants requested he do so.
- [199] I am satisfied Mr Hakaoro considered it was convenient for him to have the complainants deported as he had taken their money, failed to provide services, and breached his obligations in the ways described.
- [200] That conduct was both unprofessional and dishonest. Mr Hakaoro had instructions to approach Immigration New Zealand on the basis of making an application under section 61; it was his duty to fulfil that instruction, and his professional obligations required him to do that. He had to either return the money and terminate his instruction or provide the services he promised. Instead he actively sought to damage the complainants’ immigration opportunities.
- [201] Mr Hakaoro’s conduct was unprofessional and in breach of Clause 1 of the Code. In addition, it was dishonest behaviour.
- [202] This ground of complaint is upheld under section 44(2)(d) and (e) of the Act.

Decision

- [203] Pursuant to section 50 of the Act, the complaint is upheld, as Mr Hakaoro has breached the Code of Conduct in the respects identified, which are grounds for complaint pursuant to section 44(2)(a), (b), (d), and (e) of the Act.
- [204] The specific conduct being that which was discussed above, in particular:
 - [204.1] Failure to evaluate and advise the complainants on their immigration prospects;
 - [204.2] Procuring fees without evaluating the work required, and setting an appropriate fee;
 - [204.3] Failure to initiate a client relationship in accordance with the Code of Conduct;
 - [204.4] Procuring fees without intending to provide the services agreed;
 - [204.5] Misrepresenting that engaging Mr Hakaoro provided immunity from deportation, and that he exercised influence over immigration officials to induce the payment of fees;
 - [204.6] Failing to account for client funds;

[204.7] Demanding and retaining excessive fees;

[204.8] Using unprofessional language, and engaging in inappropriate topics of discussion; and

[204.9] Improperly delivering clients' passports to Immigration New Zealand and attempting to facilitate their deportation when he was required to provide them with professional support.

Submissions on Sanctions

[205] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.

[206] The Authority and the complainants have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, Mr Hakaoro is entitled to make submissions and respond to any submissions from the other parties.

[207] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

[208] If Mr Hakaoro claims his financial circumstances are relevant to the appropriate sanctions, he is expected to provide a statement of assets and liabilities, and income, both verified on oath, and a similarly verified and full disclosure of any interest as a beneficiary or potential beneficiary in any trust.

[209] If Mr Hakaoro claims his financial circumstances are relevant to any element of the potential sanctions, he should provide submissions in support of his position.

[210] The Tribunal notes Mr Hakaoro is in receipt of legal aid. The parties are invited to address the relationship between section 51(1)(g) of the Act, and section 45 of the Legal Services Act 2011 if the parties seek an order under section 51(1)(g).

Timetable

[211] The timetable for submissions will be as follows:

[211.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.

[211.2] Mr Hakaoro is to make any further submissions (whether or not the Authority or the complainants make submissions) within 15 working days of the issue of this decision.

[211.3] The Authority and the complainants may reply to any submissions made by Mr Hakaoro within 5 working days of him filing and serving those submissions.

[212] The parties are notified that this decision will be published with the names of the parties (apart from the names of the complainants; see paragraph [213] below) after five working days, unless any party applies for orders not to publish any aspect.

Suppression of name

[213] The names and other information that identifies the complainants are not to be published at anytime in relation to this complaint.

DATED at WELLINGTON this 1st day of August 2013

G D Pearson
Chairperson